



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: MARCH 17, 2023

IN THE MATTER OF:

Appeal Board No. 627139

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determination holding the claimant eligible to receive benefits. The employer requested a hearing and objected contending that the claimant should be disqualified from receiving benefits because the claimant lost employment through misconduct in connection with that employment and that wages paid to the claimant by such employer should not count in determining whether the claimant files a valid original claim in the future.

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances on behalf of the claimant and the employer. By decision filed December 1, 2022 (), the Administrative Law Judge sustained, effective June 6, 2022, the employer's objection and overruled the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Our review of the record reveals that the case should be remanded to hold a hearing. We have determined that further testimony and evidence should be taken with respect to the circumstances under which the claimant's employment ended.

At the remand hearing, the claimant should be given an opportunity to respond to Diane Beardslee's testimony that he was required to sign for the employer's handbook online when the company changed to its new payroll manager in 2021. The claimant should also provide the name of the supplier(s) from which he

purchased the tractor tune up kit, mower belt, and grease that he sold on Amazon, as reflected in Hearings 1 through 5, as well as his paid receipts documenting those purchase(s) from same. The Administrative Law Judge shall also question the claimant about the responses provided in the Department of Labor questionnaire dated June 13, 2022. The above-referenced documents should be entered into evidence after the appropriate confrontation.

The employer should produce Diane Beardslee at the remand hearing, in the event that additional testimony is required from her. The parties may produce any other relevant witnesses or documents. The Judge may take any further testimony or evidence necessary to decide the case.

Now, based on all of the foregoing, it is ORDERED, that the decision of the Administrative Law Judge is rescinded; and it is further

ORDERED, that the case is remanded to the Hearing Section to hold a hearing, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

JUNE F. O'NEILL, MEMBER